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FULBRIGHT & JAWORSKI			SIEFKE, SAMUEL P			
865 S. Figueroa St., Suite 2900 Los Angeles, CA 90017						
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner Samuel P Siefice 1743								
Examiner Samuel P Siefree 1743 1743 1743 1745			Application No.	Applicant(s)	Applicant(s)			
Samuel P Siefice 1743			09/886,360	COLDREN, LARF	RY A.	9)		
- Th MALING DATE of this communication app ars on the cover she t with the correspondence address - Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION. Extensions for time may be available under the procrisins of JC FR 1.136(a). In or event, however, may a reply be timely filled the set of the procrisins of JC FR 1.136(a). In or event, however, may a reply be timely filled the set of the procrising date of the communication of the procrisins of JC FR 1.136(a). In or event, however, may a reply be timely filled the set of the communication of the procrising date of this communication of the procrising date of this communication to honome ABMACHOED (SU S.C. § 133). Fill operated reply is specified some, the manifest period will apply and will reply fills (MRNTH from the raining date of this communication, even if threely filed, may reduce any search application to be communication. Fill operated the set of extended print of the reply will, by status, cause he application to honome ABMACHOED (SU S.C. § 133). Responsive to communication(s) filed on		Office Action Summary	Examiner	Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Ederations of lines may be available under the provisions of 37 CFR 1.35(a). In no event, however, may a reply be timely filed Ederations of lines may be available under the provisions of 37 CFR 1.35(a). In no event, however, may a reply be timely filed Ederations of lines may be available under the provisions of 37 CFR 1.35(a). In no event, however, may a reply be timely filed Ederations of lines may be available under the provisions of 37 CFR 1.35(a). In the statutory minimum of thinty (30) days will be considered linely. If No period for reply is specified above, he maximum statutory period will apply and will expire SIX (5) MONTES from the mailing date of file communication. Provision of 183 doc. 2 140. Feature to replace the security of 183 doc. 2 140. Feature to replace the security of 183 doc. 2 140. Responsive to communication(s) filed on 2a) Exponsive to communication(s) filed on Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exparte Queyle, 1935 c.D. 11, 453 o.G. 213. Disposition of Claims 4) Claim(s) is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 9) The drawing(s) filed on is/are: a) coepted or b) objected to by the Examiner. Application Papers 9) The drawing(s) filed on is/are: a) coepted or b) objected to by the Examiner. 10) The drawing(s) filed on is/are: a) and paperoved b)								
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Application/Control Number: 09/886,360

Art Unit: 1743

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 7, 8, 9, 15, 16, 17 of copending Application No. 09/916,541. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both comprise a pair of lasers comprising a reference laser and a sensor laser, a waveguide ,and a heterodyne detector. The only difference is that '541 refers to the sensor region of the current application as a sensor chamber.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over BEREGOVSKI, Y. et al. "Design and Characteristics of DBR-laser-based environmental sensors", November 1998 in view of Landing (WO 99/37996).

Beregovski discloses a DBR laser based sensor which comprises a pair of sensors, one being a reference laser and the other being a DBR chemical laser (page 117, 1st col., paragraph 3) each having a waveguide having a gain section (page 117, 2nd col. paragraph 1), opposing mirrors including a partially transmissive mirror (fig. 1; page 119, 1st col. paragraph 3-4 and fig. 5); the wave guide having a phase control section (page 117, 2nd col. paragraph 1); the coherent light bean output section being joined to enable coherent light outputs of the reference and senor laser to interfere

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(page 117, 2nd col. paragraph 1); a sensor region formed through and exposing the evanescent optical field to the sensor laser for receiving a sample (page 116, 2nd col. paragraph 1, fig. 8) a heterodyne detector (page 118, 2nd col. paragraph 2); a facet mirror is used and a grating mirror allows for different sampling periods (fig 6).

Beregovski does not specifically teach the sensor region being separate and spaced from the phase control section.

Lading teaches a detection of a substance by refractive index change. The apparatus comprises a pair of lasers comprising reference laser (7) and a sensor laser (7'), with a gains region (12), mirrors (11), sample cavity (8') having a an inlet for receiving a fluid and an outlet for discharging effluent and exposing to the evanescent field of laser sensor (Fig 2.), heterodyne detector (4) at the juncture of the reference and sensor coherent light output sections, for detecting the change of refractive index of the fluid in the sample chamber. Such a waveguide provides a sensor with high sensitivity, compact, low-cost and realtime sensors (abstract and introduction.) Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Bergovski to include a sensor region that is separate and spaced from the phase control in order to have higher sensitivity and lower cost for the detection of an analyte of interest.

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Response to Arguments

Applicant's arguments with respect to claims 10/10/2003 have been considered but are most in view of the new ground(s) of rejection. The modified Beregovski as seen above comprises all the limitations of the currently amended claim 1.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 703-306-0093. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Sam P. Siefke

December 17, 2003

Jill Warden
Supervisory Patent Examiner
Technology Center 1700